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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/553,397	04/20/2000	Richard R. Reisman	RRR-00-001US	4230

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WESTERLUND & POWELL, P.C.  
100 DAINGERFIELD ROAD  
SUITE 100  
ALEXANDRIA, VA 22314-2886

EXAMINER

NGUYEN, TANH Q

ART UNIT	PAPER NUMBER
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2182

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/553,397

Applicant(s)

REISMAN, RICHARD R.

Examiner

Tanh Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2000 and 31 May 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 10; 16-22, 24, 27; 28-33, 35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Pettus (U.S. Pat. No. 6,031,977)** in view of **Williams, Jr. (U.S. Pat. No. 4,868,866)**; and alternatively over **Williams, Jr.** in view of **Pettus**.

3. As per claim 1, **Pettus** teaches software stored on a computer-readable storage medium at a user station [FIG. 11; col. 5, lines 5-8; col. 15, line 19-col. 16, line 40] configured for communications with a multiplicity of independently-operated data sources [FIG. 4; Abstract: lines 1-3, lines 9-17; col. 8, lines 27-47] via a non-proprietary network (col. 2, lines 1-3), comprising functions that automatically obtain a data stream supplied by a selected one of the data sources to the user station, and that automatically capture the data stream in a storage location at the user station (col. 16, lines 35-40).

**Pettus**, therefore, teaches the claimed invention except for the data stream including desired data and other data; and except for including a monitor function that

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automatically monitors the data stream to identify receipt of the desired data and a capture function that automatically captures the desired data.

**Williams, Jr.** (Williams) teaches software stored on a computer-readable storage medium at a user station [9, FIG. 1; FIG. 9] configured for communications with an independently-operated data source [2, FIG. 1] via a network (col. 21, lines 46-51), comprising a monitor function that automatically monitors a data stream supplied by the data source to identify receipt of desired data (col. 21, lines 53-60), and a capture function that automatically captures the desired data identified by the monitor function (col. 21, line 60-col. 22, line 17), wherein the data stream includes both the desired data and other data (entitled message and other message: col. 21, lines 53-60).

Williams, therefore, teaches the claimed invention except for the software being configured for communications with a multiplicity of independently-operated data sources via a non-proprietary network, and except for the data stream being supplied by a selected one of the data sources.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Williams' teachings into Pettus' software because both teachings are directed to a user station accessing information from a data source and using the accessed information to update and/or integrate existing data at a user station, and because the combination of Williams' teachings into Pettus' software would allow Pettus' user station, already configurable for communications with a selected data source from a multiplicity of independently-operated data sources via a non-proprietary network, to automatically monitor the data stream to identify receipt of the desired data

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(entitled message) and to automatically capture the desired data and use the desired data to update and/or integrate the existing data at the user station.

Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Pettus' teachings of a user station configurable for communications with a selected data source from a multiplicity of independently-operated data sources via a non-proprietary network into Williams' software because both teachings are directed to a user station accessing information from a data source and using the accessed information to update and/or integrate existing data at the user station, because Pettus' aforementioned teachings would allow a multiplicity of independently-operated data sources similar to Williams' data source to provide information to the same user station via a non-proprietary network while allowing owners of the independently-operated data sources to focus mainly on the content and the update and/or integration of the content with an existing product at the user station without having to individually develop functions for automatically obtaining data streams from the data sources (Pettus: col. 8, lines 12-17).

4. As per claims 2-4, Pettus teaches an application address space [1104, FIG.11] and a system address space [1110, FIG.11] that automatically receive data at the user station. Williams teaches storing the desired data in temporary storage within the user station, fetching the desired data from the temporary storage and using the desired data to update a local database [735, 740, 745, FIG. 9; col. 21, line 67-col. 22, line 17].

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5. As per claims 5-7, Pettus teaches a hierarchical directory tree [602, FIG. 6] which allows each of the directory services to be located (col. 10, lines 21-25), hence teaches a user interface function that enables a user to select the data source from a listing of available data sources, and an application programming interface [602, FIG. 6] that enables a higher-level software entity [communications directory service module: 600, FIG. 6] to select the data source from a listing of available data sources.

Pettus further teaches the higher-level software entity being used to set up the communications path (Abstract: lines 1-3, lines 9-17) and obtain the data (col. 16, lines 35-39) using the system framework (col. 8, lines 1-17), hence in combination with Williams teaches the higher-level software entity containing the software.

6. As per claims 8 and 10, Williams teaches the data stream being broadcasted by the data source (col. 21, lines 46-51); and data to which a user at the user station is entitled (col. 21, lines 53-60).

7. As per claims 16-22 and 24; and 28-33 and 35, see the rejections to claims 1-8 and 10 above.

8. As per claims 27 and 38, Pettus teaches the network comprising the Internet.

9. Claims 9, 11-15; 23, 25-26; 34, 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Pettus** in view of **Williams, Jr.**, and further in view of **Clark et**

**al. (U.S. Pat. No. 6,317,797)**; and alternatively over **Williams, Jr.** in view of **Pettus**, and further in view of **Clark et al.**.

10. As per claims 9 and 11, the rejections to claims 1 and 5-7 above are incorporated by reference. Williams further teaches the broadcast messages being received from one of a plurality of available broadcast data channels (col. 21, lines 46-51), hence teaches a selector function for selecting one of the plurality of available broadcast data channels. The combination of Pettus and Williams, however, does not specifically teach a tuner at the user station for selecting one of the plurality of available broadcast data channels.

**Clark et al.** (Clark) teaches a user settable communications channel list, therefore implicitly teaches a selector function at the user station for selecting one of a plurality of available data channels to give the user control over the cost of using the data channels (col. 13, lines 17-26). Clark also teaches channel availability being a factor in selecting a data channel (col. 13, lines 27-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Clark's teachings into the combination of Pettus and Williams because all teachings are directed to a user station accessing information from a data source and using the accessed information to update and/or integrate existing data at the user station, and because Clark's aforementioned teachings would allow Pettus' and Williams' user to select a particular one of a plurality of broadcast data channels based on the cost and availability of the channels.

11. As per claims 12-15, see the rejections to claims 5-7 and 9-11 above.
12. As per claims 23, 25-26 and 34, 36-37, see the rejections to claims 9, 11 and 12 above.

### ***Double Patenting***

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).



14. Claims 1-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 1, 23, 26, and 29 of U.S. Patent No. 5,694,546**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-38 of the current application are broader than claims 1, 23, 26, and 29 of U.S. Patent No. 5,694,546.

15. Claims 1-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 3, 20, 27 of U.S. Patent No. 6,125,388**. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-38 of the current application contain essentially the same features of claims 3, 20, 27 of U.S. Patent No. 6,125,388.

#### ***Information Disclosure Statement***

16. The extraordinary large number of references cited is clouding the issue of patentability of the outstanding claims in the current application. Applicant should particularly points out the references germane to the claims within the current application.

#### ***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh Quang Nguyen whose telephone number is (703)

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305-0138, and whose e-mail address is [tanh.nguyen36@uspto.gov](mailto:tanh.nguyen36@uspto.gov). The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached on (703) 308-3301. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7238 for After Final, (703) 746-7239 for Official, (703) 746-7240 for Customer Services, or (703) 746-5672 for Draft to the Examiner (please label "PROPOSED" or "DRAFT").

Any inquiry of a general nature relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Mail responses to this action should be sent to:

Commissioner of Patents and Trademarks

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Faxes for formal communications intended for entry should be sent to:

(703) 308-9051,

Hand-delivered responses should be brought to:

Crystal Park II, 2121 Crystal Drive, Arlington, Va, Fourth Floor

(Receptionist).

  
THOMAS LEE  
SUPERVISORY PATENT EXAMINER  
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TQN

August 12, 2002